APPENDIX
TO RESPONDENTS' BRIEF, BEING A SYNOPSIS OF THE FACTS.

The following is a synopsis of the evidence as it appears in the brief filed in the Circuit Court of Appeals.

II.

The evidence adduced before the Commissioner warranted him in finding that Factor received money from the Broad Street Press knowing it to have been fraudulently obtained.

The voluminous Record makes a short review of the evidence quite difficult. We have sought to make the review as concise as possible, and hope that it will aid the Court in its consideration of the Record. The ultimate facts appearing in the Record are impartially set forth by Judge Knox in the *Klein case* (see appendix hereto for copy of his opinion), by the Circuit Court of Appeals in the same case (50 Fed. (2d) 687) and by Judge Dickinson in the *Geen case* (see appendix hereto for a copy of his opinion). These valuable opinions may satisfy this Court on the question whether there was any evidence warranting Commissioner Walker's finding. It is pertinent to point out to the Court that the Record in the *Klein case* consisted of only the first two groups of depositions presented here. The third and fourth groups had not arrived in this country at the time of the hearing of the *Klein case*. Much the same Record used in the *Factor case* was used in the *Geen case*. Until Judge

Carpenter's decision there had been no dissent from the adequacy of the evidence to support the findings that Factor, Klein and Geen were shown to be guilty of receiving money from the Broad Street Press knowing it to have been fraudulently obtained. Judge Carpenter stated in his opinion that there was no evidence warranting the Commissioner's finding that the acts of Factor were not such as would make him guilty in Illinois of receiving money, knowing it to have been fraudulently obtained. This being a mixed question of law and fact, but chiefly of fact, necessitates a review of the evidence. An examination also serves a further purpose of showing what frauds the Broad Street Press committed in the acquisition of the property, because in so far as the frauds amounted to embezzlement, fraudulent taking by a broker, agent or bailee, larceny by trick, and the sale of stock of an insolvent company, they come within the prohibited class of properties which may not be received without committing a crime in Illinois. In other words, our statute in Illinois on receiving denounces the receiving of property obtained under circumstances declared to be larceny. Embezzlement is declared to be larceny, and there are several statutes on embezzlement and fraudulent takings which are clearly applicable to the case at bar. There is a statute in Illinois, the Fraudulent Conveyance Act, which makes criminal the receipt of property knowing it to have been obtained under circumstances amounting to false pretense. Our statutes on larceny and larceny by bailee are also applicable. Our Federal statute on receiving property, knowing it to have been feloniously obtained, is unquestionably in point. These statutes will be discussed in subsequent points of the Brief. So that the review of the evidence serves to show their applicability, and will conclusively demonstrate that Factor is

not being demanded for acts peculiarly criminal in England. On the contrary, the evidence shows him guilty of many crimes recognized by both the State of Illinois and the Federal Government.

Commissioner Walker's opinion (Rec. 64), as well as those in the *Klein* and *Geen cases* are valuable aids in getting a perspective of the evidence.

In this review of the evidence, we shall take up the depositions in the following order:

1. Cyril Newman, examiner in the department of the receiver, who has charge of the liquidation of the Broad Street Press, the Vulcan and Rhodesia Companies.

2. Groom, Nicholls, Longman & Horn, real estate agents, who leased premises to the Press.

3. Jane Cunningham, Florence Farncombe, James French, Leonard Shortlands, Ernest West, Margaret Woollends and Arthur C. Detrez, employees of the Press.

4. A. S. J. Osborne and Albert Paris, the directors of the Press.

5. William Jan and Leslie Williams, the printers of the newspaper conducted by the Press.

6. August Young and W. J. King, brokers through whom the Press dealt.

7. Gladys Stacy, John Hedley, Frederick Turner and Frank S. Cochrane, four customers whose cases illustrate the fraud perpetrated by the Press.

8. R. H. Guest, Massey, Duffill, Leonard, W. H. Brett, F. H. Manning, Sharles, Williams, Sidebotham and West, who tell of acquisition of options on certain listed shares, were thereafter manipulated on the market by Factor and his associates, and used as "baiting stocks."

9. William Joseph Hill, examiner in charge of the liquidation of the Rhodesia Border Mining Corporation and Cyril Newman, examiner in charge of the liquidation of Vulcan Copper Mines.

10. R. H. Brett, Alfred Sprange, Arthur Aldis, Edward Sterling, Sidney Brignell, Agnes Penn, Jose Lerne, Stanley Spiro, Thos. Benoy, Harry Brignell, Jesse Hill, Arthur Smith, Alfred Bonnard, whose depositions deal with the Vulcan and Rhodesia Companies.

Cyril Thomas Newman, an examiner in the department of the official receiver in companies liquidation, who has charge of the winding up of the Broad Street Press, gives an excellent summary of the operations of the company. His depositions appear on pages 94, 102, 175 and 293. He says (Rec. 94), that the company was incorporated September 8, 1928, with a £5,000 capital divided into £1 shares. A. S. J. Osborne and Albert Paris were directors and had all the shares except one held by the only other officer, J. H. Osborne, who was secretary. They were unacquainted with each other and had but the slightest acquaintance with Factor, known to them as Walker. They received £100 salary to sign checks and do anything else they were told. They didn't pay for the stock issued to them. Salary increases were given them without any record being made in the minute book. Bank checks of the Press were sent to them to sign in blank. Paris never at any time visited the Press' office at 2 Broad Street Buildings. For the first few months the newspaper was called "The City News and Stock Exchange Observer." In June, 1929, the name was changed to "Finance and Stock Observer." It also had various other names. A. S. J. Osborne, while described for a time as editor, took no part whatever in editing or publishing the paper. In

September, 1929, Norman D. Spencer, an entirely fictitious person, was named as editor.

Up to about March, 1930, the Press advised clients in the buying and selling of listed securities. In March, 1930, they were widely circularized to the effect that Spencer, who was always on the lookout for shares he could recommend, was completing his negotiation in shares good for considerable capital appreciation, in his opinion, which shares he could secure at 5/-, although they would be introduced at 7s6d on the London Stock Exchange and clients were sent a form to fill in to show the number of shares they wished to be secured for them. The shares turned out to be those of Asbestos and Holdings Trust, Ltd. Similar representations were made as to the shares of the Vulcan Copper Mines and Rhodesia Border Mining Corporation. Large numbers of clients bought shares in these concerns, having previously purchased listed shares through the Broad Street Press (acting as an outside broker). The listed shares were held a short time and then were apparently sold at a profit and therefore clients were more easily persuaded to invest in Asbestos, Vulcan or Rhodesia shares. In many cases clients who had bought listed securities of solid concerns, and had been told that they had made a profit, refused to buy any further shares and asked for the profit. In spite of this, in numerous cases the Broad Street Press informed them that they had bought shares for them in one or the other of the three companies already mentioned, and they were unable to get any redress. Newman (witness) received numerous complaints from persons who bought shares on the strength of the representations of the Press and its agents. Factor, using the name Wise, withdrew £375,000 from the account of the Broad Street Press at Barclays Bank and £84,000 from its account at the Midland Bank. All of

the money has now disappeared. Mullens, Marshall, Steer, Lawford & Co., Government brokers, state that the Asbestos, Vulcan and Rhodesia shares are entirely worthless and no application to deal therein was ever made to the London Stock Exchange, as promised by the Broad Street Press. Newman identifies (Rec. 103) Exhibits 4, 5 and 6 (Rec. 126-140), which are the two checks of the Broad Street Press drawn in favor of "H. Wise," Factor's alias, and deposited to his account at the North of Scotland Bank. These are the moneys here involved and aggregate about £458,500. The withdrawals of these amounts from the Barclays Bank and Midland Bank, where the Press had its accounts, are traced by the witnesses Benjamin Williams (Rec. 117) and Cecil Gates (Rec. 118), cashiers of the respective banks. The funds are followed into Factor's account at the North of Scotland Bank by Robert Hamilton (Rec. 116), accountant for that bank. He also identifies the said H. Wise as Factor. Of course, there has never been any denial of the receipt of these moneys by Factor. It is an indisputable fact. Whereas Factor had deposited during 1930 in his personal account over £1,200,000 he left behind him and now has on deposit only £32.40.

Through the columns of the paper the Press advertised its "Stock and Share Department" (Rec. 185). It distributed to clients 36,000 copies of a manual called "Stock Exchange—Its Methods & Practice," of which A. S. J. Osborne was again the putative author, whereas in fact he had nothing whatsoever to do with it (Rec. 186).

As to the finances of the Press, Newman says that from its incorporation in 1928 up to and including February, 1930, its books show loans of £108,720 and other receipts of only £7,128, presumably from the sale of its paper and

brokerage commissions. From March, 1930, to October, 1930 (Rec. 186), when the Press went into voluntary liquidation, its receipts, no part of which were loans, totaled £1,619,736.12.5. For instance, in March, 1930, its receipts were £102,352.5.9 representing moneys sent in by clients or proceeds of the sale of securities received from clients for reinvestment in Asbestos & Holdings Trust Ltd. stock (Rec. 186). Between March and June, 1930, the Press sold 1,072,666 shares of Asbestos stock for £297,405.18.6. The Press paid Asbestos, Ltd. £30,000 on March 20, 1930, and £22,500 on June 24, 1930. Just prior thereto the Press bought back from clients shares of Sunbeam Presswork and Conveyors, Ltd. for £4,734.40. The Sunbeam shares were listed on the Exchange and had been sold to the clients. The net profit of the Press from the sale of Asbestos shares was £240,171.14.6.

Towards the end of May, 1930, the sale of Asbestos shares had practically ceased and on April 28, 1930, the Vulcan Copper Mines, Ltd. was registered in Southern Rhodesia (Rec. 187).

Circulars were sent out to clients such as Exhibits 102, 103 and 104 (Rec. 187, 267-271). (These are important for the gross misrepresentations which they contain and will receive further comment.)

On May 21, 1930, clients were circularized as to certain shares which the company had no great amount of and about May 26, 1930, the Press sold 233,453 Edison Bell shares at 14s. (Rec. 188). On June 12th, the Press sent prepaid telegrams to the purchasers of Edison Bell shares advising their sale at 23s. and reinvestment in Vulcan Copper Mines at 10s. As a result, the Press sold 247,137 Vulcan shares and took a bookkeeping loss on the re-purchase of the Edison Bells. The Press also sold

Guy Motors, giving a pretended profit to the clients on the faked re-sale of these shares, but the proceeds were re-invested in Vulcan.

By the end of July the sale of Vulcan shares practically ceased, whereupon other listed shares were sold to clients and on their resale, clients invested the proceeds in Rhodesia Border Mining Corporation stock. In the disposition of the Rhodesia stock, the Press made an initial sale to the new customers of Swears & Wells and Triplex Safety Glass stock (Rec. 188) and pretended a resale at a profit but in fact the Press only took a loss on its books. Newman sums up the results as follows: The Press sold 805,305 Rhodesia shares for £478,817.10.6 and in addition 251,095 Rhodesia shares were delivered to clients who had ordered Vulcan shares, of which the supply ran out and the capital was oversold. The Press therefore disposed of 1,056,400 shares of Rhodesia stock for £623,790.10.6 (Rec. 188) against which was a payment of £33,000 for this stock. (It is our contention it was only a division of profits to Newbury, one of Factor's confederates.)

The Press sold 1,237,013 shares of Vulcan for £667,961.11.0 (Rec. 177) but as stated above it had to deliver Rhodesia shares after the capital had been oversold. It derived from the sale of Vulcans £456,988.11.0. As respects Vulcan, the Press paid out £66,000, which we assert was again Newbury's share of the profits. As we shall see, he in conjunction with Factor organized and controlled the Vulcan and Rhodesia Companies and also Permanent Investments and Pretoria Mining Estates, Ltd. (Rec. 102).

The total profit made by the Press by the sale of Asbestos, Rhodesia and Vulcan shares was £1,287,950 less £129,035, the losses incurred in the Edison Bell, Guy Motors, Swears & Wells and Triplex Glass transactions, mak-

ing a net profit of £1,159,915. All of this took place from March, 1930, to October, 1930 (Rec. 189), and it is noteworthy that the gross receipts for the previous seventeen months of the company's existence were only £7,128.

Factor took out of the Broad Street Press £709,180 during the period of June 13, 1930, to October 27, 1930. On October 27, 1930, the directors concluded to voluntarily put the Broad Street Press in liquidation. On that very date a company check in favor of Wise (Factor) for £6,000 was written and put in his account, so that all the official receiver ever got was £508.9.1 (Rec. 190) in spite of the fact that the company was supposed to have a £5,000 capital and had made in the previous eight months a net profit of £1,159,915.

A petition for involuntary liquidation was filed against the Press October 27, 1930, by Miss Oreun, who charged that she had lost £6,000 on false representations made by the Press for investment in shares of the Vulcan Copper Mines. A winding up order was entered November 10, 1930, and the official receiver was appointed (Rec. 178).

About twenty persons were employed as stock salesmen by the Press, but there is no record of any payments to those persons. The correspondence shows frequent reference to calls by these persons on clients and prospects. Toward the end of August, 1930, clients were beginning to make claims for rescission of the contracts on the ground of fraudulent misrepresentation (Rec. 190).

The Press disposed of its assets before the official receiver was appointed to the Throgmorton Press, which survived just a few weeks and was also put in the hands of the receiver. Klein and Factor put up £6,000 for the Throgmorton Press to appear to have made a purchase of the assets of the Broad Street Press.

Of this the Throgmorton Press paid £4,785 back to the Broad Street Press (Rec. 185, 191) October 17, 1930. You will recall there was only £508.9.1 in the Broad Street Press account when it closed, so Factor and Klein by the £6,000 withdrawal on October 27, 1930, saw to it that the pretended sale cost them nothing.

We especially call the Court's attention to Exhibits 102, 103 and 104 (Rec. 267-275). Each is headed "Private and Confidential" and purports to be a document filed with a government official to comply with the statutes. It is our contention that these were especially prepared for the clients of the Press. Their contexts clearly show that they were not genuine documents filed in pursuance of any statute. The descriptions of the properties are wholly inadequate for any purpose. The witness Pearson admitted for instance that the mine described as twenty miles from Windhoek was in reality sixty-two miles from that city. (Rec. 271). Pearson further admitted that he could not descend into the shafts more than fifty or sixty feet as the same were filled with water. There is no justification for the representations as to the findings. The stock of the companies was represented as fully paid up. Exhibits 103 and 104 are not even signed, but Exhibit 102 is signed by the Broad Street Press although its connection with the Asbestos Co. which is the subject of the alleged report is not in any manner disclosed. Comparisons are made with the accomplishments of other mining companies in Exhibit 102 and it is stated that the shareholders of these companies have had large returns on their investments and the capital has shown considerable appreciation during the last few years. No one having the slightest knowledge of the character of reports generally called for by government officials would mistake these as genuine, but to the unwary and inexperienced person, they

were received with added credence in view of their purported nature. These reports, in the light of the whole evidence, are gross misrepresentations.

The testimony of the other witnesses fills in the details of the history of the Press as related by Newman.

We find that Factor went to Burnett L. Elman, a solicitor, in 1928, to incorporate the Broad Street Press. He paid Elman's expenses and fees in connection therewith. Factor attended most of the meetings and when present did all of the talking. The address used by Elman was that of the company, 27 Lincoln's Fields (Rec. 95), yet we find it had several other addresses and frequently changed about, just as it changed the name of its paper and the name of the editor thereof.

The witnesses Groom (Rec. 147), Donald Nicholls (Rec. 149), Frederick Longman (Rec. 150) and David Horn (Rec. 151) testify as to premises leased by or on behalf of the Broad Street Press. About the time the Press was incorporated, Factor had J. Wise, a jeweler, make arrangements for the various premises. It is singular that Factor used the name Wise; he used the name Guest, which was also the name of one of Klein's business associates; and he used the name Fraser, the name of one of Newbury's associates. In August, 1928, J. Wise rented the premises at 2 Broad Street Buildings. Elman's name in this instance, as in all, was given as a reference and he invariably obliged by advising the real estate agent that J. Wise would make a responsible tenant. From February, 1929, to October, 1930, the Broad Street Press was the tenant, having taken over the lease to Wise (Rec. 148).

About July, 1928, J. Wise also rented premises at 2 Broad Street Place. Elman was given as a reference. Rent on the premises was paid by H. Wise (Factor). Mon-

creiff and Spellen, subordinates of Factor, also paid the rent at times (Rec. 150).

At 42 Cornhill Klein subleased the premises from R. H. Guest about March, 1930, to carry on business there under the name of F. Jackson & Co. Investment Brokers (Rec. 151) of which company Herbert Spellen, one of Factor's lieutenants, was the registered proprietor (Rec. 153). Klein, on the plea of Max Gerson, also connected with the Broad Street Press, was released from liability for rent.

Gerson arranged this in November, 1930, when Klein was "away from England and not too well off" (Rec. 228). This was just a few days before the issuance of a warrant for the arrest of Klein and Factor (Rec. 94, 98) so that in truth Klein was "not too well off."

Other premises occupied by the Press were 14 Copthall and 15 Copthall. The latter was also Newbury's address. It is to be seen that from the very outset Factor deliberately concealed his operations and sought to shield himself by hiding behind his employees and associates.

We shall take up the testimony of witnesses who were employed by the Broad Street Press. They are Jane Crawford Cunningham (Rec. 123), Florence Farncombe (Rec. 121), Jas. R. French (Rec. 124), Leonard V. Shortlands (Rec. 122, 317), Ernest Frank West (Rec. 122, 336), Margaret Woollends (Rec. 121, 316), Arthur C. Detrez (Rec. 318).

From the employee witnesses we are informed that Factor was known to some as Walker (Rec. 121) and to others as Guest (Rec. 121, 122, 123). He was constantly present (Rec. 121) except for an occasional visit to Paris in which case he would keep in touch by phone. While Spellen did the editorial work, assisted by Detrez, they acted on every instruction from Factor (Rec. 124). These em-

ployees were engaged by the Press at various addresses. One was given a position at 2 Broad Street Buildings, another at 42 Cornhill, where on the door was the name of F. Jackson & Co. Investment Brokers; another at 14 Copthall. The office forces were combined for a time at 2 Broad Street Building and at another time they occupied premises at 2 Broad Street Place. The witness Shortlands, an office boy, tells how at 2 Broad Street Buildings Factor, Klein and Geen occupied the "Board Room," where they received the Press' customers, inquiring for Norman D. Spencer. Telephone inquiries for Spencer were also referred to these three. Factor left about October 13th and Klein went away about two weeks later. Thousands of pounds of shares in sound concerns were put in the name of Samuel Fraser, 48 Grosvenor Sq., where Factor using the name of Fraser, lived with Klein. These were undoubtedly shares sent in by clients for sale by the Broad Street Press.

Ernest Frank West, an employee, (Rec. 122, 336) gives a very clear picture of the procedure inside the Press. He was manager of the Stock and Share Department. He says that lists of purchasers for Asbestos stock were submitted to Factor and were then sent to the offices of the Asbestos Co. for the preparation of certificates. He was employed at 14 Copthall. The staff went then to 42 Cornhill, thence to 2 Broad Street Buildings. At 14 Copthall the name United Overseas Trust was on the door. By June, 1930, the volume of work so greatly increased that additional help was required. West says that while the Press sold Edison Bell shares, in fact it had bought none. The recommendation of this share was preparatory to the campaign to sell the Vulcan shares. The Press made a pretended purchase of Edison Bell shares for clients at 14 and a short time later pretended to sell them for

the clients at 23, although the actual market was only 22/6. In other words the Press allowed more than the market price. There was in fact no purchase or sale. It was a mere bookkeeping entry. The proceeds of the pretended re-sale of the shares by the Press were reinvested in Vulcan shares. Where clients asked for the Edison Bell shares purchased, there was delay, for the reason that the Press had none to deliver. This, we submit, was clearly a bucket-shop transaction. The alleged proceeds of the sale of Edison Bell shares was invested in round numbers in the Vulcan shares, the small balance in some instances being sent to the customer. West says that mail and telegraph facilities were used in effecting these sales. The foregoing also illustrates what took place with respect to the sale of Rhodesia stock also. Clients first requested the Press to purchase Triplex shares at 25 and the Press allowed 35 against the purchase of Rhodesia shares, pretending that these were genuine transactions. The company, West says, did not buy any Triplex shares. He spoke to Geen about it, but still none were forthcoming. Clients pressed for delivery and some commenced proceedings. No Triplex shares were ever delivered. In September Factor told West that the Vulcan and Rhodesia companies were going to be amalgamated, so purchasers of Vulcan who had not received their stock were given Rhodesia shares. This was an excuse, we submit, necessitated by the fact that the capital of the Vulcan had been oversold, in spite of an increase of the capital from £200,000 to £600,000. The very fact that the directors or stockholders had never met for such purpose casts that suspicion toward this suggestion, which is aroused over every phase of the acts of Factor and the Press. Another listed share mentioned by the witness is Fisher Foils, which clients were advised to purchase. We shall point

out what took place with respect to this stock as it illustrates the tactics employed by Factor to make it appear to subscribers that Spencer could really predict the trend of the market.

West saw Factor for the last time on September 25th. Factor did not mention he was going to leave. Thereafter West was given very little instruction as to his work. Geen left about October 10th.

Some of the editorial work was done by Arthur Detrez. He never met Spencer, but he did take instructions from Factor, who also supervised Spellen's work. Detrez also made contributions to the manual distributed by the Press. This witness tells of the demise of the Press in October, 1930, and the birth of the succeeding concern, Throgmorton Press, to publish the "Financial Observer." About that time Detrez was subpoenaed as a witness by the General Stock Exchange, which Factor claimed had libelled him. Factor never saw his suit through. So certain was the General Stock Exchange of the truth of its accusations against Factor, it had no hesitancy in seeking proof among Factor's own associates. Detrez told Spellen about the subpoena. Spellen told him the case wouldn't come up. The reason was that Factor saw the end was in sight and he, moreover, was well provided for. He had reduced his account at the North of Scotland Bank to a paltry £32.4.0 whereas his deposits since the first of the year totaled about $6,000,000. He had sent £200,000 in British War Bonds to Chicago to his mother-in-law, Louise Cohen, so there was very little to hold him in England and litigation and Scotland Yard investigations to drive him away.

In preparation for the creation of the company, Factor sought some docile directors, who for money were induced to assume a responsibility which Factor planned to avoid.

These directors, Osborne and Paris, testified in the preliminary hearing of the prosecution against J. Wise, Moncreif, Newbury and Elman, and their connections with the Broad Street Press appears in their testimony.

Osborne (Rec. 196), who was introduced to Factor as Walker in September, 1928, was in the employ of Newman Williams & Co. Factor told him that he was going to bring out a high class financial newspaper. He asked Osborne if he wanted to be a director; told him his chief job would be to safeguard the money, of which there would be a fair amount; and arranged to pay Osborne £100 a year. Osborne knew nothing about Factor but he consented to the proposition. In consequence in due time he was allotted 1,998 of the 3,000 shares in the Broad Street Press, for which he did not apply and for which he paid nothing. He knew nothing about running a newspaper, but his duties until the last four or six months of the companies' existence required only about five minutes of his time per day. He was able to continue in the employment of Newman Williams & Co. At lunch time he used to go to the office of J. Wise at Broad Street Place where he would see Moncrieff and sign checks which had already been signed by Paris, who Factor had told him was Elman's brother-in-law.

Osborne had nothing whatever to do with the running of the paper; never wrote any articles for it; didn't know who the real editor was; didn't know if his stock was paid for; didn't pry into the business of the company; didn't know the company was dealing in shares until he inquired, after noting the great many checks which he was called upon to sign; didn't know anything of the management of the business; didn't get a copy of the paper of which he was the putative editor unless he asked for it, and then it would be so late in forthcoming that he would buy

a copy; didn't know about the action instituted in his name against the Truth Publication Co.; didn't know why Reid Sharman & Co. were made solicitors of the company to act in consultation with Elman, and never had any reason therefor; didn't know of the dissemination of circulars 102, 103, and 104, also 108 and 110.

Surely a mere recital of these things that Osborne didn't know without additional exposition is sufficient to demonstrate that Osborne was not supposed to know anything under Factor's plan and he was a complete fulfillment of the type essential to the success of this fraud. It is not to be wondered therefore that Factor raised his salary and in Osborne's eyes was a "generous man."

Osborne was not consulted when the name of Norman D. Spencer was substituted for his own as editor of Finance, nor did he ever discover who Spencer was.

It was Factor who saw Osborne during 1930 when the latter would perform his duties for the company. They met at an office in Copthall Avenue daily, Factor told him to ask for him, Factor, in the name of Guest and Factor would have the checks for Osborne to sign. When he found out they were dealing in shares, Osborne said the checks were for hundreds and thousands of pounds.

This contact was all that was necessary for Factor to get blank checks in which he could substitute his own name, and it was by this means that he was able to extract about $3,500,000 from the company's bank accounts.

Osborne testified that he knew nothing at all about the Vulcan, Rhodesia and Asbestos Companies. He had nothing to do with the preparation of the book "Stock Exchange, its Methods & Practice," which described him as editor. He was never asked to give his views on any matters of the company.

When Factor and the rest saw that the end was near, they sought to give the business of the concern the semblance of regularity. In October when the company went under, Osborne was called upon to sign a great many allotment letters and lists at Newbury's office with regard to Vulcan, Rhodesia and Asbestos stock. He signed the draft agreement for sale of the Broad Street Press to the Throgmorton Press, although he was not consulted about the sale. The evidence adduced by Albert Paris (Rec. 202) is just as incriminating of Factor as that of Osborne. It is manifest that Factor didn't want and wouldn't have had a director who would have insisted on discharging the duties imposed upon him by law and in this pair of directors he had everything that he could desire.

Paris, a brother-in-law of Elman, was asked to become a director in the summer of 1928. He was a traveler for Sparklets Ltd. He didn't inquire of Factor why he was chosen. It was sufficient that he was to receive £100 a year. He carried out the duties as outlined by Walker, —that is, he signed checks. Even when he was traveling in the provinces, check books were sent to him to sign and return. He says he did nothing beyond this and attending meetings. He never went and was never asked to go to the Broad Street Press offices. He knew nothing about the company's business; never asked; and was never told. He attended the meetings and Factor was at most of them; if he was not there the business of the company was not discussed at all. He never inquired, but did think that his co-director Osborne was the real editor of the paper. He never saw any of the company's books except the minute book. He says he didn't know the company was dealing in shares until about October, 1930, when the writs were coming in, and he then realized they referred

to share transactions. He was surprised to receive the writs and turned them over to Reid Sharman & Co. solicitors for the Press. He mentioned it to his brother-in-law Elman. He didn't know the company was selling Asbestos, Rhodesia and Vulcan Co. shares. He never authorized payments to Elman in respect of any matters of the company. All checks signed by him were blank when he signed them. He never authorized Elman to defend actions brought against the company and didn't know of and was not consulted about the libel action against "Truth."

From the witnesses Frederick Turner, William Jan and Leslie Williams we learn about the printing of the journal and also the book.

Jan, a partner of Hillman & Co., printers, talked to Factor, whom he knew as Walker in August, 1928. His firm did not do the actual printing, but represented the Press in having the printing done and supplying the trade. The original order was for 100,000 copies of the paper weekly. The City News was printed in that way until June 12, 1929. The name was changed. This witness never met Osborne who was stated to be the editor, nor did he ever meet Spencer. He says that he knows nothing about the printing of the Stock Exchange Practice Book which purports to have been printed by his firm.

Leslie Williams of Williams Lea & Co., printers, frequently went to the Press offices at 2 Broad Street Buildings. He says there were special issues of the weekly totalling 382,000 copies. He never met either Spencer or Osborne, but he saw Factor, whom he knew as Walker, also Klein, Geen, Spellen and Detrez. It was Factor who arranged the printing contract with this witness and no one else. It was Williams' firm that printed the Stock

Exchange Manual, and he consulted Factor, Spellen and Detrez from time to time during the production of the book. After the Broad Street Press closed down, his firm printed the issues of the journal issued by the Throgmorton Press, from October 22 to November 5, 1930.

The testimony of Augustus Young (Rec. 113, 332) the broker through whom the Broad Street Press dealt, and Wilfred J. King (Rec. 329) his clerk, is highly significant. Factor, first known to Young as Wise and later as Guest, had an account opened in the name of A. J. Klein who was carrying on the business of an outside broker; that is, one who was not a member of the London Stock Exchange, but had to transact his business through a member-broker. On Factor's instruction, Klein's account at Young's was changed to the name of the Broad Street Press in March, 1930. From that time until October, 1930, the Press sold £650,000 worth of securities and purchased only £95,000 worth of listed securities. The significance of this disparity is manifest. Clients were sending their securities to the Press for sale through its "Stock and Share Department," in connection with the advice of the Press that this be done for re-investment in other listed securities, this being the initial transaction with the customer. As a matter of fact, only a very limited amount of listed securities were purchased, namely, £95,000. (Thousands of pounds of shares of clients were not sold but were transferred to the name of Samuel Fraser.) The reason was that while the client contemplated a genuine transaction, the purchase of the new security was simply a bookkeeping gesture to the Broad Street Press. Thus, there was no trouble with a resale for the client of the listed share, and the investment of the proceeds into the final deal by which the Press gave the client his certificate in one of its pet companies, *i. e.*, Asbestos, Rhodesia or Vul-

can. The advantage of the bucket shop transaction is clear. The Press ran no risk of a market decline, being in position to tell its clients that the purchase fortunately had not been made and where the share did rise the Press could readily give the client a profit, for the whole credit was put in Asbestos, Vulcan or Rhodesia shares.

Another very important disclosure made by this testimony is that (Rec. 329) Young purchased £200,000 British War Bonds for Factor, which were sent by Young to Louise Cohen, Factor's mother-in-law in Chicago, in care of the Foreman National Bank. The receipts of Mrs. Cohen and the bank appear on page 386 of the Record.

Gladys Stacy (Rec. 104), John Hedley (Rec. 107), Frederick Turner (Rec. 109), Frank S. Cochrane (Rec. 111) are four illustrative cases of customers. Three of the four received gratis copies of "Finance." Each purchased a listed share in his initial dealing with the Press. At the same time they were advised of a copper share shortly to be introduced on the London Stock Exchange. Mrs. Stacy was given a profit on Swears & Wells stock, which was reinvested in Rhodesia stock. The instruction to sell and the reinvestment in Rhodesia was by telegram. The Press sought to unload on Mrs. Stacy further Rhodesia shares, advising her that a group of financiers were endeavoring to gain control of Rhodesia and were offering 15/. This customer was told not to sell, as the price would likely go to £2 a share. "Spencer" advised her he had an option on 2,000 Rhodesia shares at 10/ a share. We know, as a matter of fact, that this was a falsehood. The Press owned all of these shares. In consequence, Mrs. Stacy sent in a number of shares held by her in other concerns for reinvestment of the proceeds of their sale in Rhodesia. A still further effort was made to induce her

to buy Rhodesia shares by having a salesman call on her.

John Hedley's experience was much the same. He made a purchase first of Swears & Wells and on getting a pretended profit he authorized the sale of Swears & Wells and reinvestment in Rhodesia. This witness was again solicited to purchase more Rhodesia shares, and in spite of his emphatic refusal, the Press sent him a contract purchase note for more shares, to which he paid no attention.

The witness Turner (Rec. 109) got a letter from Spencer advising the purchase of Edison Bells. Later Spencer wrote him he was investigating a Rhodesian copper share of 10/ and which would shortly be introduced on the London Stock Exchange at not less than 15/. Turner got a wire instructing him to sell the Edison Bells and reinvest in Vulcan Copper Mines at 10/. This he consented to. He was then advised that a group of financiers were endeavoring to obtain control of the Vulcan Co. Spencer predicted the Vulcan shares would eventually rise to £2. Turner bought further Vulcan shares, paying 12/ therefor. He saw an article in "Truth" advising people to consult their solicitors. He wrote the Press about it, but in reply all he got was a certificate for his Vulcan stock. This was in the latter part of August. As late as October he was told the progress of the mines was very satisfactory, when as a matter of fact nothing whatever was being done with reference thereto and the Vulcan Company had never even concluded its pretended purchase of properties.

Cochrane agreed to buy Phantestra shares first at 2/ if the deal was closed through his bank. In spite of the fact that the deal was never closed, he was extended a

pretended profit, but he agreed to purchase some Asbestos & Holdings Trust shares. He was cautioned not to sell them, as they would later reach 20/. In consequence of a further letter from Spencer, he bought more shares at 6/. Later he accepted a pretended purchase for him of Edison Bell shares at 14/, including fees, although he had not authorized the Press to purchase them. He required that the deal be closed through his bank. Later he was advised the shares had been sold for him and he received a check for £108 net profit, although it later developed that the bank had never been called upon to pay anything on his behalf. Thereafter, a salesman from Spencer advised him to buy Vulcan Copper Mine shares, which he assured Cochrane would be only a sixty day transaction, yielding a substantial profit. He made several efforts to have Spencer sell the Asbestos and Vulcan shares, but never succeeded in getting the shares sold. This witness and the others were finally advised that Norman D. Spencer had to go away for health reasons. They state that as a result of the inquiries they are convinced the shares are worthless and their money obtained from them by fraudulent means.

It is interesting to note what the company was doing during the seventeen months prior to March, 1930, when it commenced the sale of Asbestos stock. The columns of its paper were advising subscribers with reference to the movement of listed shares. It was carrying out a journal strictly in accordance with stock exchange practice in order that it might acquire a reputation or standing as a reliable financial paper. It gave opportunity to laud the ability of the editor, who predicted movements in shares which Klein and Factor controlled. An illustration of their method of operation during these months is shown in the depositions of R. H. Guest (Rec.

154), Hohne (Rec. 156), Massey (Rec. 158), Ashby (Rec. 166), Duffill (Rec. 327), Leonard (Rec. 329), W. H. Brett (Rec. 333), F. H. Manning (Rec. 169, 308), Sharles (Rec. 166), Williams (Rec. 168), Sidebotham (Rec. 334) and West (Rec. 336). The dealings of Factor and Klein with respect to Sunbeam Presswork and Conveyance Company is illustrative of their operations in certain listed securities. Through one Hohne, Klein was introduced to Russell Sidebotham (Rec. 334), a broker of the London Stock Exchange. Klein wanted to be put in touch with a line of shares in a reputable mining company. This being accomplished Klein secured an introduction to the witness Duffill, another broker and a member of British Investment Service, Ltd., in order that he, Klein, might be put in touch with provincial brokers for the purpose of dealing in the West African Diamond Syndicate shares. These witnesses have stated that West African Diamond shares, while speculative, were nevertheless reputable and in consequence Klein was introduced to about 150 country brokers. Klein said his nominee would be Elman, the solicitor of the Broad Street Press. One of the brokers with whom Klein was put into communication was Goulton Leonard (Rec. 250). Having arranged these facilities, Klein communicated with the brokers with respect to Sunbeam Presswork shares, without the consent of the parties who had introduced him to them. They had never been told of any intention on his part of dealing in the Sunbeam Presswork shares.

Witness Manning (Rec. 169, 308) tells how he was approached by Klein regarding the purchase of a large block of stock in some concern whose shares were listed. Manning is connected with a brokerage house and knowing someone who held a block of 475,000 Sunbeam shares, he told Klein of these, whereupon Klein took an option

on these shares, 25,000 to be taken up in fourteen days, at prices from one-third to two-thirds of the par value being 2/-. Klein paid £2,500 from Factor's account at the North of Scotland Bank, on which he had a power of attorney (Rec. 229). This was in January, 1930. Manning says that the markings had been 2 to 2/3, showing a very limited movement in the shares when allowed to run their natural course on the market. Klein's nominee for these shares was one W. Knight. As quickly as Klein had the option the shares became very active, moving to 5/6 or 6. So violent was the activity in the stock that the Stock Exchange suspended dealings therein. From the time that Klein obtained the option to the time of the suspension was just a few days. Klein never took more than 40,000 out of the 475,000 shares. He sought to unload these shares through the country brokers with whom he had been put in contact as aforesaid. Klein arranged to have the prices of the stock quoted in the provincial papers (Rec. 229). The Broad Street Press paid £1,000 toward the purchase of Sunbeam shares. The witness Leonard (Rec. 329), one of the country brokers, tells how he received a letter from Elman (Rec. 382), asking that Leonard sell 10,000 Sunbeam shares at 6/3, but this broker, after making inquiry, declined to have anything to do with the order and sent Elman a telegram to that effect. Leonard told Elman that the shares were not of a class in which either he or his clients were likely to have any interest (Rec. 383). When Klein was taken to task by the witness Duffill (Rec. 327), who had assisted in introducing him to the country brokers, for having sought to deal with them with respect to Sunbeam shares instead of the West African shares contemplated at the time of the introduction, Klein simply shrugged his shoulders and said, "Well, we couldn't do the West African Diamond shares."

Eventually, the Sunbeam Presswork had to go into the hands of the official receiver (Rec. 158).

It is to be pointed out that Klein, through Elman, was trying to unload the shares at 6/3, which he had purchased at 2/3 or less, but these same parties sought to lure the clients of the Broad Street Press into purchasing stock in the Asbestos Company at 5/, upon representations that it was not available under 7/6 (Rec. 274). Clients were further told that a group of financiers were endeavoring to obtain control of the Rhodesia Border Mining Company, and were offering 15/, whereas Spencer was willing to let them go at 10/ (Rec. 105).

Somewhat the same effort was made by Klein with respect to Fisher Foils shares as that attempted with respect to the Sunbeam shares. A large block was purchased. Clients of the Broad Street Press were told (Rec. 336) to buy these shares. Factor's money was used in part payment (Rec. 154). Dealing in the shares was suspended (Rec. 166, 232) by the London Stock Exchange, because of the activity after Klein took hold of them. This made it impossible to unload the shares on the public, so failing in this, Klein and Factor, operating behind Butchart, Carey & Dalman and Elman (Rec. 166), sought to compel the directors of the Fisher concern to take up the shares which they held, either themselves or by soliciting the other Fisher stockholders. Elman said that a group of American financiers were interested in the enterprise, and in the event the shares were not purchased he threatened to compel an extraordinary meeting of the stockholders and directors and an investigation into the affairs of the company. This stall about the American financiers was the same one used with respect to the Rhodesia and Vulcan. In this way Klein did succeed in disposing of a fair number of shares. While he had the market in hand the shares

jumped violently between 1/-, the par value, and 5/10½d. In this instance Klein had secured a large block of the shares in a worthwhile concern known to the public. The history of Klein's dealings with respect to the Phantestra stock was the same as that heretofore related in the Fisher Foils and Sunbeam Presswork transactions.

As quickly as Klein had an option (Rec. 156) on a large block of these shares, unusually active dealings took place on the Stock Exchange, with a result that the Stock Exchange Committee suspended the shares and Phantestra was put into the hands of a receiver (Rec. 158).

The witness Hohne (Rec. 156) tells how Klein induced him to allow him to sublet Hohne's office at 14 Copthall Avenue, the offices of the United Overseas Trust, Ltd. This was after the deals in Fisher Foils and Phantestra. From his deposition and a copy of his letter to Klein (Rec. 230) it would appear that there was developing a very antagonistic trend against Klein and his associates in influential financial quarters, which Klein professed to care nothing about. Hohne advised Klein that there were very decided views gathering great force in the city against them and Hohne was fearful that he would be implicated because Klein had taken over Hohne's quarters at 14 Copthall. Before Hohne subleased to him Klein had promised that he would operate differently and stated he had severed his connection with the Broad Street Press.

The culmination of the dispute between the two was a suit by Klein against Hohne, which was never disposed of in view of Klein's flight to this country. This suit was just like those Factor instituted for libel where the defendants had no hesitancy in going right to Factor's own employees to prove no untruthful libel had been published against Factor.

The depositions hereafter considered deal with the creation of the Vulcan and Rhodesia companies. They show Factor's connection with these companies. Factor told Newbery he was in the market for properties for a South African Company to have a capital of about £200,000 to £250,000. Factor mentioned the name Vulcan Copper Mines. We find Newbery carrying out the suggestion after Klein paid £830 preliminary expenses. The evidence conclusively shows that the companies were not genuine, but were created for the sole purpose of unloading their shares on the public which had been lured into accepting the advice of Spencer. Just as in the case of the directors of the Broad Street Press, those of the Vulcan and Rhodesia companies had no voice in the management. They were induced to accept the position of director by Newbery who allowed them substantial compensation for the negligible amount of work in connection with the issuance of stock certificates. At all times they did what they were told to do by Newbery and his lieutenants, Stirling, Spiro and Sidney Brignell.

Before taking up the depositions of the officers and directors of the Vulcan and Rhodesia Companies and those of Stirling, Spiro and Sidney Brignell, who are Newbery's lieutenants, we shall point out the pertinent parts of the deposition of Cyril Newman who has charge of the winding-up of the Vulcan Co. and of William J. Hill who has charge of the winding-up of the Rhodesia Company.

Newman testified (Rec. 102) that on November 24, 1930, a compulsory winding-up order was entered against the Vulcan Co. and the official receiver appointed; that there is no evidence of the ownership of properties in South Africa; that the only asset is £28,303.2.9 cash in the bank (which we are convinced is simply Newbery's share which he had not withdrawn at the time the law overtook him);

that this sum was received from the Broad Street Press for shares later sold the public at greatly enhanced prices; that the Press also sold the public shares acquired from Permanent Investments, Ltd. (also controlled entirely by Newbery) being shares agreed to be allotted by Vulcan as part consideration for the purchase of properties which the company purported to possess at the time the shares were sold to the public.

Vulcan Copper Mines (Rec. 176) was registered April 28, 1930, in Rhodesia; the books show Klein was reimbursed £830 preliminary expense in forming the company.

There are no documents showing title to any properties in South Africa. The Vulcan Co. purported to enter into a contract with the Permanent Investment Co. to purchase certain properties in South Africa (Rec. 653) on June 27, 1930.

From a letter found by Newman (Rec. 247) written by Alex. Fraser, a dummy director in Rhodesia to the secretary of the Vulcan Co., we find him calling on the company to carry out the statute and for a list of the allotments of shares for cash and properties. He says the registrar is particular about the matters. The return as to shares was supposed to be made within thirty days of the time of their allotment. This letter was written November 18, 1930, months after the allotments. Fraser states he has had several inquiries from shareholders and he has no information he can give. This, he remarks, is a very bad state of affairs and he should be given information. "It is rather awkward that a Director knows nothing about the Company it represents."

As to the contract between Permanent Investment and the Vulcan Co. the consideration called for is £512,000 of which £12,000 was payable in cash and £500,000 in cash on shares at the option of the Vulcan Co.

An examination of the contract discloses a total lack of adequate description of the properties, numerous remarks irrelevant to the purposes stamping it as a fake deal. There are errors in the information which were revealed by Pearson. For instance, the contract says that ore properties, Block B, are located in the Hoboth District at a distance of some twenty miles from the town of Windhoek (Rec. 655) whereas Pearson admitted on cross examination that there is no Hoboth District and that the mine he would have us believe was meant, was sixty-two miles from Windhoek. He furthermore admitted that the mines inspected by him were filled with water and prevented his descending further than fifty or sixty feet so that he was unable to say what work had taken place.

The directors of the Vulcan Co. filed a statement of affairs in which is included as an asset along with the £28,275.12.3 cash, an item of £6,000 being the amount which the Vulcan would have to pay to get the properties from the Permanent Co. This is the same figure used in the case of the Rhodesia Co.

The statement further shows a deficiency of £505,332.2.3 to meet claims of defrauded persons holding Vulcan stock, amounting to £533,200.

William Joseph Wallace Hill (Rec. 103) who has charge of the liquidation of the Rhodesia Co., for which the official receiver was appointed November 24, 1930, says there is no evidence of its ownership of any property in South Africa; that its only asset is £29,413.18.4, received from the Press for shares sold the public; that the Press also sold shares acquired from the Pretoria Mining Estates Co. (controlled by Newbery) which it acquired for properties contracted to be sold to the Rhodesia Co. These shares are worthless; and that there have never been any dealings on the London Stock Exchange.

The directors never managed the business although this was provided for by the by-laws (Rec. 194). They received £100 a year each, and the chairman £200.

Hill found an agreement (Rec. 706) between the Pretoria and Rhodesia Companies relative to the purchase of properties in South Africa, separated by 1,000 miles and the Kalahari desert; that the consideration was supposed to be £600,000, payable £12,000 in cash and the balance in shares or cash at the option of the Rhodesia Co.; that the deal was not concluded on October 31, 1930, as stipulated. Nevertheless the Rhodesia Co. honored the order of the Pretoria Co. to allot the shares to the Press which paid £33,000 for shares of a par value of almost £600,000 which the Press actually received therefor when it unloaded them onto the public. In addition the Press applied for directly and received 66,000 shares from the Rhodesia Co. (These payments were simply the shares of Newbery in the deal.)

The directors filed a statement of the financial condition of the company with the receiver (Rec. 196) in which it is admitted that no properties are actually owned, but the amount of £6,000 is put in as an asset of the company on the assumption that the Rhodesia Co. by payment of this amount to the Pretoria Co. could acquire the properties in South Africa. We have heretofore mentioned that these properties, even assuming they could be acquired, were simply mining claims staked out by Pearson at a cost of approximately $1.50 apiece every six months. On two properties Newbery was supposed to hold an option but so far as evidence discloses, the options were never exercised.

There is a deficiency of at least £592,827.7.11 to meet the claims of the defrauded purchasers of Rhodesia stock who paid therefor £621,000 (Rec. 196).

We shall see by the following depositions what had taken place with respect to the creation of those companies. In respect to their lack of management they parallel the Broad Street Press. Newbery, Factor and Klein engineered these companies from behind the scenes the same as Factor did in the Press. The contracts obligating the Vulcan and Rhodesia companies for £512,000 and £600,000 as the purchase price of worthless properties, were the work of an underling of Newbery and were never genuine deals. Newbery's Pretoria and Permanent Companies pretended to sell to Newbery's and Factor's Rhodesia and Vulcan Companies properties in South Africa acquired for practically nothing separated by 1,000 miles and the Kalahari desert. The whole thing was a fake, but a highly lucrative scheme.

Stanley Spiro (Rec. 323), a commission agent who got £16,000 in the Vulcan and Rhodesia deals, gives some important information, shaded in some places to avoid incriminating the parties as much as possible and incomplete in other respects. He knew Factor under three names. He also knew Newbery. About March, 1930, Spiro returned from America. He went to Newbery and told him he had heard Factor was making a lot of money and there would be a good chance of doing business with Factor, but Newbery said he didn't want to be bothered with Factor because he had failed to pay Newbery in a previous deal. We feel it fair to assume in the light of this attitude that the very fact Newbery again consented to deal with Factor indicates that not only was the old difficulty ironed out, but undoubtedly Newbery was well provided for with respect to the Vulcan and Rhodesia deals, which he subsequently entered into with Factor. This accounts for the payments by the Press to Newbery's Pretoria and Permanent Companies and for the moneys which were found in the treasuries of the Vulcan and Rhodesia Com-

panies. Furthermore, no reasonable man can conclude that Factor was drawn into paying any substantial sum for the worthless properties here involved. The slightest investigation of the contracts would have shown what meaningless things they were. Furthermore, the evidence shows that neither the sellers or buyers had title to any properties.

Spiro brought Factor and Newbery together and Factor promptly told him he wanted a Rhodesia copper property, and he said he was thinking of forming a company for £200,000 or £250,000. Factor mentioned the name Vulcan Copper Mine. Later, after the deal was entered into, Newbery said he was having some difficulty getting a check for working capital, so Spiro got from Factor the Press' check, dated July 3, 1930, in favor of the Vulcan for £33,000 which Spiro handed to Newbery.

About July or August Spiro saw Factor, who told him of the Rhodesia Co. Factor said he was well satisfied with the property for the Vulcan.

Another dispute arose between the parties, the difficulty, as usual, being that over the commission. Gerson, who introduced Factor to Spiro, wanted a commission from Spiro. When Spiro refused to pay it, Gerson stopped the Rhodesia deal. Gerson was a salesman of the Press and close to Factor and Klein. The dispute was straightened out by Elman, solicitor for the Press. He charged £4,000 of the £33,000 supposedly coming to the Rhodesia Co. Newbery in this deal injected T. W. Webb & Co. so that the deal would be a little different from the Vulcan deal. Brett (witness) went with Spiro to Elman's office to get this check. Spiro got £2,000 for his services and a total of £16,000 for the two deals.

Sidney Brignell, right-hand man of Newbery, testified (Rec. 301) that he got A. F. Smith as secretary for the Vulcan Company at Newbery's suggestion. Brignell filed the particulars of the Vulcan Co. at Somerset House, London, after Newbery's agent (Fraser) in Buluwayo incorporated the company. Klein paid the expenses of £830. This witness arranged for the issuance of certificates and supervised this work. The minutes of the Vulcan Co. were written up in November. Brignell wrote letters to inquiring stockholders to which he put Smith's signature. He admits that his statement in the letters that the Vulcan owned mining claims was not true, as it had not completed the purchase. Exhibit 164 (Rec. 371) is a sample of such letters.

This witness, at Newbery's request, engaged directors for the Rhodesia Co., registered it and did the same work for it that he had done for the Vulcan, including the supervision of share certificate work, and getting up the minute book sometime in November, 1930. The £29,000 check which Elman gave Spiro and which Spiro gave Newbery was put into the T. W. Webb & Co. account. Spiro appeared a few days later and left with a check drawn on the Permanent Investment's account.

None of the meetings of these companies was held as represented in the minute book. Brignell wrote up the minutes as he thought they ought to be.

The agreement between the Rhodesia & Pretoria Co. was not completed October 31, 1930, but was extended two months. He heard of an amalgamation from Newbery, but learned of the extension from letters dated October 27, 1930, showing the merger was purely an afterthought. In November, Brignell got £5,000 from the account of Permanent Investments and gave it to Newbery.

Brignell was London secretary of the Roodiklip Gold Mining Co., whose head office was supposed to be at Johannesburg. This company is said to be the registered owner of the properties under contract to the Vulcan and Rhodesia Companies, and holds same as trustee for the Permanent & Pretoria Companies for tax purposes. We call your attention to the fact that if the Roodiklip Co. of Johannesburg, Transvaal, could hold title, certainly the Vulcan and Rhodesia Companies could do so as they were incorporated in the very places where the properties were located. On October 13, 1930, the Roodiklip Co. gave a power of attorney to Permanent to facilitate transfer of the properties which were never transferred. Newbery has a large interest in it.

Edward A. Stirling (Rec. 296) was closely associated with Newbery's companies as secretary and director. About the middle of April, 1930, he sent a cable to Alex. Fraser at Buluwayo, Rhodesia to register the Vulcan Co. Later Newbery had Stirling cable Fraser to increase the stock from £200,000 to £600,000, as the company was going to do a bigger business.

Stirling drafted the agreement between the Permanent and Vulcan Co., involving the supposed sale of South African properties, using old forms of agreement. Newbery told him to do this. The schedule of properties was to be prepared and attached by Newbery. This was said to be a few days prior to June 27, 1930. Stirling saw no plans or reports relating to the properties.

He also drafted the agreement between the Pretoria and Rhodesia Companies.

Newbery discussed a merger of the two companies some time in October.

Exhibit 157 consists of copies of letters from the Vulcan to the Press dated in June, July, August and September, 1930, purporting to send share certificates of the Vulcan. As a matter of fact, the originals were not sent, as the Press already had sent the certificates. These letters were prepared in October about the time the nomination letters from the Press were prepared. Mrs. Penn, who had no connection with the Press, typed these letters on letterheads of "Finance" (the Press' letterhead) furnished her by Stirling (Rec. 310).

The nomination letters prepared by Mrs. Penn, ostensibly as the act of the Broad Street Press, resulted from Stirling's complaint to Klein that all the Press had ever done was to send over a bunch of names of purchasers of Vulcan and Rhodesia stock, without nomination letters (Rec. 299).

The very fact that minute books of the three companies, correspondence, etc. was prepared at the last minute is convincing evidence of the probability that the alleged contracts for the purchase of the mining properties were also prepared at the same time. Some of the officers of the Vulcan and Rhodesia Companies knew nothing of these deals and did not see the contracts until they were shown to them at the office of the official receiver after he had been appointed to take over the companies.

Passing to a consideration of the depositions of the officers and directors of the Vulcan and Rhodesia Companies, we find these men of the same stripe as the directors Osborne and Paris of the Press. They were dominated in much the same way, avoided doing anything without instruction from Newbery or his underlings, signed anything they were requested to sign and were in general the very embodiment of all that Factor and Newbery could desire. These officers and directors were requested

to take the positions by either Newbery or Brignell. They unquestionably consented because there was little work to be performed and attractive pay for the work they actually did.

Alfred Sprange (Rec. 204) was a director of the Vulcan Co. He says the company never conducted any business, its only work being the issuing of stock certificates. He knew nothing of the properties involved in the deal between his company and the Permanent Investments Ltd. The first thing he knew of the transaction was when he was asked to sign it. At that time the company did not have the £12,000 initial payment called for. There was no differentiation between cash and vendor shares when certificates were issued upon receipt of nomination letters from the Press.

It will be recalled that the capital of the Vulcan Co. was increased from £200,000 to £600,000. A special resolution was drawn up and purported to have been passed at a meeting of the directors. The meeting was never held. Newbery presented the document to Sprange for his signature, saying that the increase was necessary to enable the company to take over additional mines.

This witness never saw any documents showing title to any properties in Rhodesia or S. W. Africa, which his company contracted to purchase from the Permanent Co. Newbery promised to show plans and reports but never did so. The contract was never completed (Rec. 208).

The company minute book was prepared in November, 1930.

Alfred Bonnard's deposition (Rec. 208) is much the same as that of his fellow director Sprange. However, he pretended to know something of the properties in South Africa and stated he thought very highly of them. He

makes the fatal blunder of referring to the Lomagundi property in S. W. Africa, whereas it is in Rhodesia. He did not know that the properties were separated by a desert, although he pretended he knew there was considerable distance between them. He admits he did not know how the purchase price of £512,000 was arrived at, although it was his company that obligated itself to pay this amount to the Permanent Co.

This witness signed the check for £830 payable to Klein to reimburse him for expenses of registration of the Vulcan Co.

The Vulcan Co. did not carry out any work on the properties in Africa and did not send anyone there ~~to~~ investigate the properties. The Permanent Investment Ltd. sent Pearson to examine the properties.

Arthur F. Smith, secretary of the Vulcan Co., stated (Rec. 213) that he accepted the position at the solicitation of Sidney Brignell. He assisted in the allocation of share certificates, but did not keep a minute book. About November 10, 1930, he wrote up the minutes of certain meetings from typewritten sheets given him by Brignell. He did not know until the winding up proceeding in November of any resolution for an increase of the company's capital. He did not know of the contract between the Vulcan and Permanent Companies until he saw it November 10th at the official receiver's office. He signed several checks in blank sometime in July. When he returned from his examination at the official receiver's office, Newbery asked what had happened and then discussed with Sterling the withdrawal of the £28,000 at the Bank of England to Buluwayo. This, however, was not done.

Jesse Hill (Rec. 215) became a director of the Rhodesia Co. at Newbery's request. As to the agreement between

his company and the Pretoria Co., he states he never saw any title document; never inquired as to the value of the properties; signed the agreement because S. Brignell asked him to do so; made no inquiry as to where his company was to get the money; was never consulted as to the agreement. He further admits that his only interest in the company was his remuneration for services, which consisted of the signing of necessary documents. This he did without inquiry. He never in any way controlled the management of the company.

Harry Brignell (Rec. 217), another director of the Rhodesia Co., stated that his duties consisted of signing share certificates and blank checks. He further says that the meetings recorded in the minute book did not in fact take place and his reported presence at the meetings is untrue. The agreement between the Rhodesia and Pretoria Companies was not presented at a meeting as recorded in the minute book. In fact, he did not see the agreement until it was presented to him at the office of the official receiver. In the statement of affairs of the company filed with the official receiver, the figure of £6,000 was put in because that was the figure used by the Vulcan Co. in its statement.

Thomas Benoy (Rec. 218) says he became secretary of the Rhodesia Co. at Sidney Brignell's request. He did not have charge of the minute book, which he saw for the first time at the office of the official receiver. He did not see the agreement between Rhodesia and Pretoria Companies until shown to him there; it is signed by Ozanne, which is Newbery's agent in Guernsey. He says he does not know how the £6,000 appearing in the statement of affairs filed with the official receiver is arrived at, and admits that he did nothing in connection with the business of the company except what he was told to do and he had no real knowledge of what he was doing.

Arthur John Aldis (Rec. 295) was given the position as transfer agent of the Vulcan Copper Co. by Newbery, and his office was given as the London headquarters of the company. On September 16, 1930, Inspector Wiltshire of Scotland Yard went to Aldis' office. Newbery attempted to pass off this visit, but nevertheless spent some time thereafter interviewing stockholders of the Vulcan Co. who came with complaints. This witness also says that all mail addressed to the Vulcan Co. received by him was re-posted to Newbery's office.

Commissioner Walker, over the objection of the demanding government, admitted the testimony of Harry Pearson. This witness is supposed to have examined the properties in South Africa. In view of the fact that the directors of the Vulcan and Rhodesia Companies admitted that the contracts for the purchase of the properties were never completed, objection was made to Pearson's testimony. Nevertheless, it was admitted. Pearson had not worked for anybody else but Newbery since 1924 (Rec. 508). He made two trips to South Africa: one on January 10, 1929, returning February 3, 1930, to South West Africa, where he examined mines called by him the Otjsongati Extension the Ubib and Spitzkopie; on the second trip he left June 28, 1930 and returned December 29, 1930, having examined in Southern Rhodesia mines which he called the Crescent, the Neardy and the Gael. The first striking thing learned from his testimony is that he had not examined the Crescent mine until July 24, 1930, although the Vulcan had contracted to purchase it from the Permanent Investments Ltd. on June 27, 1930. In fact, he had not left England at that time. Newbery was supposed to hold an option on this mine. There is no evidence as to the amount to be paid therefor; no contract giving him the option is produced, and more important is the fact that there is no

evidence whatsoever that the option, whatever it was, was ever exercised.

Another very significant thing appearing in Pearson's testimony is that Crescent mine is in Southern Rhodesia, 1,000 miles separated from the other two mines which the Vulcan Co. was supposed to have contracted for. These other two mines were the Ubib and Spitzkopie, located in South West Africa. In spite of the fact that Pearson had examined the Otjsongati Extension on his first trip it was separated from the other two South West Africa mines which the Vulcan was supposed to get, and was allocated to the Pretoria Co. for supposed sale to the Rhodesia Border Mining Corp. In other words, the Vulcan Co. was supposed to get two South West Africa and one Southern Rhodesia mine, whereas the Rhoesia Co. was supposed to get two Rhodesia mines and one South West Africa mine. It is certainly not conceivable that the Vulcan Co. in any bona fide transaction would contract to purchase a property which its representative had never seen. These facts indicate that the Vulcan-Permanent agreement and the Rhodesia-Pretoria agreement were not drawn up at the times shown therein, but in all likelihood were prepared about the time the companies went into receivership along with the minute books and other correspondence which the directors admitted were not prepared until that time. Only in that way can one account for the fact that some of the directors did not see the agreements until shown them at the receiver's office.

Another thing that stands out in Pearson's testimony is the fact that he obtained certificates of claims giving mining rights to the properties. These were said to adequately describe the properties as located in definite geographical divisions having definite numbers. The prop-

erties were described by metes and bounds. These certificates were sent to Newbery. If this is true, why were ridiculously inadequate descriptions used in the contracts and in the circulars sent out to the clients of the Press? Furthermore, Pearson admitted he could not locate the properties by these descriptions, and as stated before, he admitted that one property described as twenty miles from Windhoek was in fact sixty miles from that city. He admitted there was no Hoboth District as mentioned in the agreement (Rec. 655).

Pearson paid for the claims in South West Africa thirty-five shillings each, which entitled the claimant to work the properties for six months after which time another thirty shillings would have to be paid. In other words, the cost of three of the six mines involved is thirty shillings every six months. As to the other three on which Newbery was supposed to hold an option, there is no evidence whatsoever that the option was ever exercised.

Furthermore, as to the mines upon which Newbery held an option, Pearson stated his inspections were confined to a descent into the shafts a distance of about fifty feet. Below that level the shafts were filled with water. Nevertheless, he was perfectly willing to subscribe to the reports of engineers handed to him by parties interested in the sale of the properties.

Without further examining the testimony of this witness, we feel the Court must inevitably rule that the Commissioner properly concluded that this evidence was not sufficient for the purpose intended by Factor's counsel. The Commissioner recognized that the testimony in many instances was not explanatory but controversial and therefore inadmissible. It would have been manifestly unfair to require the demanding government to go to trial before the Commissioner and put in evidence rebutting that

of Pearson. None of his testimony would need to have been admitted in view of the showing that the Vulcan and Rhodesia Companies never acquired the properties in question.

Commissioner Walker further observes (Rec. 72) that while Pearson was making these investigations in Africa, the scheme for the sale of the stock of the companies was then well under way in London.

Without further discussion of the evidence, we submit it has been shown that Commissioner Walker was fully justified in holding that the charge against Factor was sustained. The Broad Street Press is shown to have been guilty of fraudulently acquiring its clients' property and money in various ways, by false representations, by fraudulent conversions of property entrusted with it, by tricking its clients into delivery of property in such a way as to amount to larceny, by fraudulently holding itself out as a broker whereas it was in reality selling the stock of the Vulcan and Rhodesia Companies owned outright by it. Here was a gigantic swindle, operated by Factor who all the while cleverly concealed his own movements by the use of willing human tools. What a travesty on justice it would be to see him granted absolute immunity from prosecution and allowed to enjoy the immense profits derived from the impoverishment of hundreds of people. Furthermore, is there any reason why he should be singled out among his fellow conspirators to escape punishment, —particularly where Klein and Spellen have been convicted by the courts of England?